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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/462,218	05/22/2000	CHARLES POTTER	OPF10.02	4802

7590

04/22/2004

ALISA A. HARBIN  
CHIRON CORPORATION  
4560 HORTON STREET, M/S R-338  
EMERYVILLE, CA 94608-2916

EXAMINER
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SIRMONS, KEVIN C

ART UNIT	PAPER NUMBER
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3763

DATE MAILED: 04/22/2004

18

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/462,218

Applicant(s)

POTTER ET AL

Examiner

Kevin C. Simons

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 26 February 2004.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) 6, 7, 9-12, 15-18, 20 and 23-25 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 14, 19, 21 and 22 is/are allowed.
- 6) ☒ Claim(s) 1-5 and 8 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date 13.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

**DETAILED ACTION**

***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 3 and 4 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As to claim 3, it is unclear how one can have a closed pocket when there is an intermediate space established between said upper and lower opposing faces where the plug and housing do not contact each other. Clearly, during the aforementioned phase, there is not a closed pocket.

As claim 4, it is unclear how the plug and the housing contact each other at upper and lower opposing faces, that there is a closed pocket provided by a cavity or recess formed in the plug or housing and the cavity or recess positioned between the upper and lower opposing faces. There is no closed pocket provided by a cavity or recess formed in the plug or housing. However, there is closed pocket provided by a cavity or recess between the plug and housing. Please indicate by reference numeral where there is a cavity or recess positioned between the upper and lower opposing faces when there is closed pocket.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3763

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-2 and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by M.L.

Lockhart U.S. Pat. No. 2,636,493.

Lockhart discloses a capsule comprising: a first member (11) and a second member (16) are coupled together to provide a closed pocket within the members (figs. 1 and 4); and one of said first and second member is moveable relative to the other member when a portion (18) of said capsule is contacted with a pressurized fluid flow, said first and second members being constructed and arranged such that upon said relative movement a passage is formed through (17); said capsule and said pocket is opened to expose the dose for entrainment in fluid flowing through the passage (figs. 2 and 5); as to claims 2 and 8 (figs. 1 and 4).

#### ***Allowable Subject Matter***

Claims 3-5 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

Claims 14, 19, 21 and 22 are allowable over the prior art of record.

#### ***Conclusion***

Any inquiry concerning this communication or earlier communication from the examiner should be directed to Kevin C. Sirmons whose telephone number is (703) 306-5410. The examiner can normally be reached on Monday - Thursday from 6:30 am to 4:00 pm. The examiner can also be reached on alternate Fridays.

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*KCS Sirmons*

Kevin C. Sirmons

Patent Examiner

4/19/04